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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

OCT - 6 2004

DOCKETED BY	<i>CHK</i>
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In the matter of:

LONZO ARCHER
1512 Plymouth Road N., Brunswick, NJ 08902;
CRD No. 1979672

Respondent.

DOCKET NO. S-03437A-03-0000

**MOTION TO RECOGNIZE
SECURITIES DIVISION
ALLEGATIONS AS ADMITTED**

Because respondent to this action LONZO ARCHER ("Respondent") failed to submit a timely Answer to the Securities Division's Notice of Opportunity for Hearing as required by rule, the Securities Division of the Arizona Corporation Commission ("Division") hereby requests that the presiding Administrative Law Judge recognize as admitted each of the allegations brought by the Division against Respondent in this action.

This motion is supported by the case record in this matter and by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 6th day of October, 2004.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

By:

Michelle M. Allen
Michelle M. Allen

Attorney for the Securities Division

MEMORANDUM OF POINTS AND AUTHORITIES**Procedural History**

On May 7, 2004 the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order of Revocation and For Other Affirmative Relief ("Notice of Opportunity") against respondent LONZO ARCHER ("Respondent") alleging violation of the Securities Act of Arizona. Respondent was served on June 3, 2004. Respondent filed a Request for Hearing and Notice of Appearance through New York counsel Michael Kalmus.

On June 11, 2004 the Hearing Division's First Procedural Order directed Respondent's counsel to file a Motion for Pro Hac Vice, and to hold the case in abeyance for sixty days from the date of the receipt of the First Procedural Order.

On August 9, 2004, Respondent's New York counsel timely filed a Motion Pro Hac Vice through local counsel, Anthony Bingham. A prehearing conference was set September 8, 2004 by the court's Second Procedural Order. Undersigned counsel filed a motion to continue the hearing for one month, which was granted to October 7, 2004.

At best, Respondent's Answer was due on or about September 9, 2004. In or about the week of August 30, 2004, undersigned counsel telephoned local counsel as a professional courtesy to indicate that an Answer had not been filed. Approximately three weeks later, no Answer had yet been filed. Undersigned counsel e-mailed both counsel for Respondent on September 20, 2004 to indicate that she would be filing a motion for default. On September 29, 2004, Respondent filed an Answer.

Discussion

The filing requirements applicable to respondents in administrative actions brought by the Division are provided within the Arizona Administrative Code ("A.A.C."). One such requirement is the timely submission of an Answer. Pursuant to Title 14 of the A.A.C., a respondent who has requested an administrative hearing *shall* file in the record and serve upon the Division an Answer to a Notice of Opportunity within 30 calendar days after the date of service of the Notice of Opportunity. *A.A.C. Rule R14-4-305(A)*.

1 But for good cause shown, the failure to submit an Answer to a Division's Notice of
2 Opportunity in a timely manner has clearly defined consequences. AAC Rule R14-4-305(D)
3 specifically provides that, in connection with a respondent's Answer to a Notice of Opportunity,
4 "an allegation not denied *shall* be considered admitted" (emphasis added). As a result, a
5 respondent who declines to file any answer at all to a Notice of Opportunity effectively admits to
6 all allegations contained therein. Such constructive admissions obviate the need for any formal
7 hearing on the merits, and the submission of a proposed final Order by the Division is subsequently
8 appropriate.

9 As discussed above, the deadline for Respondent to file an Answer to the Division's Notice
10 of Opportunity expired. Not only did Respondent miss this deadline, but he then made no effort
11 to either explain this failure or to pursue a filing extension to the Hearing Division. Even though
12 Respondent eventually filed an Answer, absent an Order of the Administrative Law Judge, such an
13 untimely Answer does not avoid the fact that all the allegations in the Notice are deemed admitted.
14 Pursuant to A.A.C. R14-4-305(G), the burden is on the Respondent to show good cause why his
15 Answer was untimely. Unless the Administrative Law Judge finds that Respondent has shown
16 good cause for his failure to timely file his Answer, his late answer is irrelevant.

17 Under A.A.C. rules, this failure to file an Answer has plain legal implications: Respondent
18 has relinquished his right to challenge the allegations brought by the Division. To move this
19 matter towards a final determination, the presiding Administrative Law Judge should consequently
20 issue an order recognizing all allegations contained in the Division's Notice of Opportunity as
21 admitted.

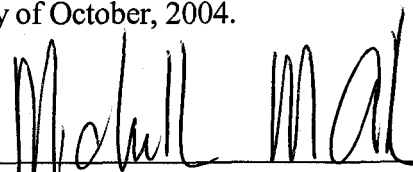
22 **Conclusion**

23 Under applicable law, Respondent has failed to make the requisite filings to preserve his
24 right to challenge the Division's Notice of Opportunity in this matter. As a consequence of this
25 failure, the presiding Administrative Law Judge should facilitate the resolution of this matter by
26

1 entering an order recognizing as admitted all allegations brought against the Respondent in the
2 Division's Notice of Opportunity.

3 Upon the affirmation of the allegations contained in the Division's Notice of Opportunity,
4 undersigned counsel respectfully requests this court to direct the Division to file a proposed Order,
5 consistent with allegations in the Notice, to be heard at the Open Meeting of the Arizona
6 Corporation Commission.

7 RESPECTFULLY SUBMITTED this 6th day of October, 2004.

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9 _____
10 Michelle M. Allen
11 Securities Division
12 Arizona Corporation Commission
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18 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
19 filed this 6th day of October, 2004, with

20 Docket Control
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, AZ 85007

24 COPY of the foregoing hand delivered this
25 6th day of October, 2004, to:

26 The Honorable Marc Stern
Arizona Corporation Commission/Hearing Division
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Phoenix, AZ 85007

1 COPY of the foregoing mailed
2 This 6th day of October, 2004, to:

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